

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON LYNDALE COOPER,

No. C 08-1516 SI (pr)

Petitioner,

**ORDER DENYING REQUESTS FOR
DEFAULT AND RECONSIDERATION**

v.

JEANNE S. WOODFORD,

Respondent.

Petitioner filed a request for default because he did not receive a copy of respondent's answer. Before the court ruled on that request, petitioner filed a request for reconsideration in which he presented a copy of his legal mail log to show that the answer had not been received at the prison. Upon receipt of the request for default, respondent's counsel sent a letter to the court explaining that a copy of the answer had been mailed to petitioner when it was filed, and that a replacement copy had been mailed to him. Petitioner has now received the replacement copy of the answer and has filed his traverse. He has suffered no harm as a result of the answer not reaching him when it was initially mailed.

The request for default and request for reconsideration are DENIED. (Docket # 9, # 11.) Respondent did not default in this action because she filed her answer before the extended deadline of November 14, 2008. Entering default as a sanction for whatever postal problem caused the answer that was mailed not to reach the petitioner would be an excessive response to the problem. Cf. Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1989) ("failure to respond to claims raised in a petition for habeas corpus does not entitle the petitioner to a default

1 judgment"); Bermudez v. Reid, 733 F.2d 18, 21 (2d Cir. 1983), cert. denied, 469 U.S. 874 (1984)
2 ("were district courts to enter default judgments without reaching the merits of the claim, it
3 would not be the defaulting party but the public at large that would be made to suffer, by bearing
4 either the risk of releasing prisoners that in all likelihood were duly convicted, or the costly
5 process of retrying them").

6 IT IS SO ORDERED.
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8 DATED: January 26, 2009



SUSAN ILLSTON
United States District Judge

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